



JUDICIAL STANDARDS COMMISSION

STATE OF MONTANA

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November 16, 2022

Kyle Schmauch
Communications & Policy Manager
Montana State Senate Majority
Via email: kyle.schmauch@legmt.gov

Dear Mr. Schmauch:

I have received your request for public records of the Judicial Standards Commission which you submitted to our Executive Secretary, Shelly Smith on October 7, 2022. As I understand, you have asked the Commission to provide the following:

1. Copies of meeting minutes or similar recordkeeping from all JSC meetings that occurred from January 1, 2022 to today (October 7, 2022);
2. The total number of complaints received by the JSC during the same timeframe;
3. The total number of complaints reviewed by the JSC during the same timeframe, if different from the number received;
4. The status of complaints reviewed by the JSC from hearing a complaint (which JSC member(s) recused on how many complaints) during the same timeframe;
5. Records of any recusal of any member of the JSC from hearing a complaint (which JSC member(s) recused on how many complaints) during the same timeframe;
6. Copies of written correspondence with any complainants (dismissal letters, etc.) during the same timeframe.

The Montana Constitution, adopted by the citizens of our state in 1972, directed the Legislature to create a Judicial Standards Commission to receive and investigate complaints of misconduct against Montana judges. Mont. Const. art. VII, § 11(1). The Montana Constitution also explicitly states that "the proceedings of the commission are confidential except as provided by statute." Mont. Const. art. VII, § 11(4). With certain exceptions, "all papers filed with and proceedings before the commission. . . are confidential and the filing of papers with and the testimony given before the commission. . . is privileged communication." Mont. Code Ann. § 3-1-1105(1). Similarly, the Rules of the Judicial Standards Commission conform to the constitutional requirement regarding confidentiality. Rule 7(a) provides:

Rule 7 – Proceedings Confidential

(a) All papers filed herewith and all proceedings before the Commission shall be confidential while pending before the Commission. A Complaint dismissed by the Commission under Rule 10(e)-(f) is no longer confidential, and a complainant may disclose the complaint and the Commission's response. If an investigation results in formal proceedings, then the record filed by the Commission with the Supreme Court loses its confidential character upon its filing. Further, a proceeding loses its confidentiality if §§ 3-1-1131 through 1126, MCA, are involved in accordance with the terms thereof.

Montana Supreme Court, AF 14-0356, Judicial Standards Commission Rules.

In light of the confidentiality constraints placed upon the Commission, I cannot provide all the information you seek. However, I will answer your requests to the extent Montana law allows:

1. Meeting minutes of JSC meetings in 2022.

The meeting minutes contain the names of the judges against whom a complaint has been filed and the identity of the complainant. Pursuant to Montana Constitution article VII, § 11 and Montana Code Annotated 3-1-1105(1), the meeting minutes are confidential, and I have no authority to release them. However, the complainants whose cases have been dismissed are no longer bound by these confidentiality provisions and are free to release them.

2. Number of complaints filed with the Judicial Standards Commission.

The Commission met November 14, 2022, for our regularly scheduled meeting. To date, the Commission has received 73 complaints.

3. Number of complaints the Judicial Standards Commission has reviewed.

As of November 14, 2022, the Judicial Standards Commission reviewed 73 complaints received in 2022. At our January 24, 2022 meeting, the Judicial Standards Commission also reviewed 2 complaints received in 2021.

4. The status of complaints the Judicial Standards Commission has reviewed.

To date, all of the complaints received in 2021 and 2022 have been dismissed except for 6 matters: two complaints remain under review; three complaints are awaiting a response from a judge; and one complaint is awaiting the Judicial Standards Commission to appoint an investigator.

I recused myself in two matters, both of which the other members of Judicial Standards Commission unanimously dismissed. There have been no other recusals of Judicial Standards Commission members in 2022.

5. Records of recusals.

In each matter in which I recused myself, the meeting minutes indicate that I recused myself from participating in the review, deliberation and decision regarding the complaint. The other members found no unethical conduct and dismissed the complaints.

6. Copies of written correspondence with any complainants (dismissal letters, etc.).

Pursuant to the Montana Constitution and Montana Code Annotated cited herein, the dismissal letters are confidential and may only be released by the complainant or the judge—not the Judicial Standards Commission. Specifically, Rule 7(a) provides that “a complaint dismissed by the Commission under Rule 10(e)-(f) is no longer confidential, and a complainant may disclose the complaint and the Commission’s response.” Similarly, a judge against whom a complaint has been filed may waive the confidentiality provisions of these proceedings pursuant to Montana Code Annotated § 3-1-1122. In all cases in which the Judicial Standards Commission files a formal complaint against a judge, however, Rule 7(a) states that “the record filed by the Commission with the Supreme Court loses in confidential character upon its filing.”

As you know, the Legislative Audit Division has recently assigned a program analyst to review the Judicial Standards Commission for a performance audit. Montana Code Annotated § 3-1-1125 authorizes the legislative auditor to “audit the commission to determine whether it is efficiently and effectively processing complaints against judicial officers of the state.” Moreover, the statute provides that the confidentiality provisions of the Montana Code Annotated “do not bar the legislative auditor from obtaining access to any information possessed by the commission that is necessary to the legislative audit function so long as confidential information is kept confidential by the legislative auditor.” Mont. Code Ann. § 3-1-1125(2).

Although the confidentiality provisions of Montana law limit prohibit me from providing some information, I am available at your request to assist the Legislature to the extent I am able.



Mike Menahan, Chair
JUDICIAL STANDARDS COMMISSION

C: Sen. Greg Hertz, Montana State Senate